

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 ARAE-00 AID-05 IGA-02 SNM-02 DEAE-00  
L-03 TRSE-00 NSC-05 /028 W  
-----042032Z 024874 /44  
R 041602Z MAR 77  
FM AMEMBASSY BOGOTA  
TO SECSTATE WASHDC PRIORITY 259

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E.O. 11652: N/A  
SUBJECT: HELICOL SERVICES CONTRACT

REF: BOGOTA 1484

1. AMBASSADOR HAS RECEIVED LETTER FROM MINJUSTICE TRANSMITTING RESULTS OF CONTRACT NEGOTIATION BETWEEN GOC AND HELICOL AND A DRAFT COPY OF CONTRACT.

2. FOR DEPARTMENT'S INFORMATION, TRANSLATED TEXT OF MINNJUSTICE LETTER HERewith SUBMITTED:

QUOTE AS A RESULT OF OUR MEETING HELD IN MY OFFICE, SEVERAL MEETINGS HAVE BEEN HELD WITH THE DIRECTORS OF HELICOL IN ORDER TO DECIDE ON THIRD PARTY LIABILITY AS A RESULT OF THE OPERATION OF AIRCRAFT TO BE USED IN THE CONTROL OF DRUG TRAFFIC. THE FOLLOWING CONCLUSIONS WERE REACHED:

1. PURSUANT TO THE AGREEMENT, NEITHER THE UNITED STATES GOVERNMENT, NOR AID, NOR ITS AGENTS OR STAFF CAN BE HELD LIABLE FOR DAMAGES TO A THIRD PARTY, UNLESS THE DAMAGES ARE CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

FOR THE GOVERNMENT OF COLOMBIA, HELICOL, AND OTHER ENTITIES  
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OR PERSONS, LIABILITY FOR DAMAGES CAUSED TO A THIRD PARTY WILL BE ASSUMED BY THE PARTY HAVING CAUSED THEM, EXCEPT FOR DAMAGES TO THE AIRCRAFT, WHICH WILL BE ASSUMED TOTALLY BY THE GOVERNMENT OF COLOMBIA.

2. ACCORDING TO THESE ESTIMATES, HELICOL SHOULD GET ONLY THIRD PARTY INSURANCE IN THE AMOUNT OF TEN MILLION DOLLARS, WHICH HAS

A PREMIUM OF US\$44,731.18.

3. HELICOL HAS SUGGESTED THAT SMALL MODIFICATIONS BE MADE  
TO SEVERAL CLAUSES IN THE CONTRACT BETWEEN THE GOVERNMENT AND HELICOL

AS FOLLOWS:

(A) ADD TO CLAUSE THREE THE FOLLOWING: "EXCEPT FOR  
THE EVENTS COVERED UNDER ARTICLE FIVE OF THIS CONTRACT, IN WHICH THE  
AIRCRAFT WILL BE RETURNED IN ITS CURRENT CONDITION."

(B) ADD TO CLAUSE EIGHT THE FOLLOWING: "EXCEPT FOR AN ACT  
GOD, FORCE MAJEURE, LABOR PROBLEMS, OR UNAVAILABILITY OF HELICOL'S  
OWN EQUIPMENT PROVIDED IN LETTER (C) OF CLAUSE TWO OF THIS CONTRACT.  
LIKEWISE, HELICOL WILL NOT BE HELD RESPONSIBLE FOR FAILURE TO  
COMPLY IF AID DOES NOT COMPLY WITH OR DELAYS ITS PAYMENTS WITHOUT  
JUSTIFICATION UNDER THIS CONTRACT OR UNDER THE CONTRACT TO BE SIGNED  
WITH HELICOL IN ACCORDANCE WITH CLAUSE FOUR OF SAID CONTRACT."

(C) FINALLY, IT IS SUGGESTED THAT THE NAME OF THE PERSON  
WHO WILL SIGN ON BEHALF OF THE UNITED STATES GOVERNMENT BE SPECIFIED  
IN THE CONTRACT TO AVOID DELAYS IN ITS EXECUTION (CLAUSE ELEVEN).  
I AM ENCLOSING HERewith A NEW DRAFT OF THE CONTRACT AND IF YOU FIND  
IT  
CONVENIENT, IT CAN BE JOINTLY STUDIED BY AID, HELICOL, AND MINISTRY.  
END QUOTE.

3. AID LEGAL COUNSEL HAS REVIEWED COPY OF DRAFT GOC/HELICOL  
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CONTRACT. THOUGH WE HAVE NOT IN ANY WAY CONCURRED IN GOC APPROACH  
TO NEGOTIATE CONTRACT DIRECTLY WITH HELICOL NOR EXPRESSED AN OPINION  
WOULD BE OBJECTIONABLE TO US IN ANY EVENTUALITY. THEY ARE: QUOTE  
SEVENTH CLAUSE: "CADUCIDAD" - (TERMINATION FOR DEFAULT) THE GOVERNMENT

RESERVES THE RIGHT TO TERMINATE THIS CONTRACT FOR REASONS OF "CADUCID  
AD"  
BASED UPON ANY OF THE CAUSES OF TERMINATION PROVIDED IN ARTICLE 39 OF

DECREE 150 OF 1976, THEREOF." END QUOTE. AND QUOTE ELEVENTH  
CLAUSE: CONTRACT VALIDITY - THIS CONTRACT WILL BE VALID UPON ITS  
PUBLICATION AT THE "DIARIO OFICIAL" AND THE PAYMENT OF THE  
REGISTRATION TAXES BY HELICOL. SINCE THE PAYMENT OF COSTS OF THIS  
CONTRACT ARE TO BE MADE BY THE US GOVERNMENT, AS PROVIDED IN  
THE FOURTH CLAUSE, THIS CONTRACT AND ANY AMENDMENT THERETO MUST  
BE PREVIOUSLY APPROVED BY THE DIRECTOR OF USAID. END QUOTE.

4. THE PAYMENT OF REGISTRATION TAXES BY HELICOL AS REQUIRED IN THE  
DRAFT CLAUSE WOULD BE UNACCEPTABLE IN THAT THE USG WOULD, EFFECT, BE

PAYING THESE TAXES IN VIOLATION OF USAID BILATERAL AGREEMENT.

5. AMBASSADOR PLANS MEET WITH MINISTER TO PRESENT USG RESPONSE  
TO GOC/HELICOL CONTRACT. MAJOR ISSUE CONTINUES TO BE PAYMENT OF  
THIRD PARTY LIABILITY IN THE AMOUNT OF \$44,731.18 FOR THE FIRST YEAR,  
AND  
POSSIBLY EQUAL AMOUNT OF MORE FOR THE SECOND YEAR OF THE PROAG. OTHER

ISSUES NOTED IN DRAFT CONTRACT WE BELIEVE COULD BE NEGOTIATED OUT, IF

USG ACCEPTS GOC POSITION AS STATED IN MINISTER'S LETTER.

6. EMBASSY SOLICITS DEPARTMENT'S GUIDANCE PRIOR TO ARRANGING MEETING  
BETWEEN AMBASSADOR AND MINJUSTICE.  
DECONTROL FOLLOWING MARCH3, 1978.  
SANCHEZ

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## Message Attributes

**Automatic Decaptioning:** X  
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**Channel Indicators:** n/a  
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**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
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**Original Previous Classification:** n/a  
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**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009